

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE

20TH JUDICIAL DISTRICT, DAVIDSON COUNTY

THE TENNESSEAN, ASSOCIATED PRESS,)
CHATTANOOGA TIMES FREE PRESS,)
KNOXVILLE NEWS SENTINEL, TENNESSEE)
ASSOCIATED PRESS BROADCASTERS,)
TENNESSEE COALITION FOR OPEN)
GOVERNMENT, INC., TENNESSEE PRESS)
ASSOCIATION, *THE COMMERCIAL APPEAL*)
WBIR-TV CHANNEL TEN, WKRN-TV)
CHANNEL TWO, WREG-TV CHANNEL)
THREE, WSMV-TV CHANNEL FOUR,)

Petitioners,)

vs.)

TENNESSEE DEPARTMENT OF)
CHILDREN'S SERVICES,)

Respondent.)

N.F.
No. 12-1769-II

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MEMORANDUM and ORDER

The Petitioners, as set forth in the caption above, are a coalition of media organizations and reporters who seek access to public records involving fatalities and near-fatalities of infants, children and youth who have been entrusted to the care of Respondent State of Tennessee, Department of Children's Services ("DCS"). On December 19, 2012, the Petitioners filed their Complaint¹ for Access to Public Records pursuant to the Tennessee Public Records Act, Tenn. Code Ann. §10-7-501, *et seq.*, and specifically sought (a) that DCS forward to the Court for an *in camera* review all case files relating to each "fatality" or "near fatality" of a child in the care of

¹ Tenn. Rule Civ. P. 3 provides that all civil actions are commenced by the filing of a complaint, although the term "Petition" was used in the pleading filed with the Court.

DCS from January 1, 2009 to the present, including all investigative reports, all fatality reviews, and all task force reviews which DCS allegedly refused or failed to produce after the Petitioners' request, (b) that the Court expeditiously review all such records, making only redactions as may be required under the Public Records Act, (c) that upon completion of its review, the Court order that the requested records, as redacted, be immediately made available to the Petitioners and (d) that Petitioners be awarded all reasonable attorney's fees and costs, if the Court determines that DCS's refusal to disclose these public records was willful, with all costs taxed to DCS.

DCS filed its response to the Petition on January 7, 2013, asserting that the documents sought by the Petitioners were not public records and were specifically excepted from disclosure pursuant to the Tennessee Public Records Act. Further, DCS identified six additional statutes that conferred a confidential status on the records sought by the Petitioners, each of which imposed criminal penalties for unauthorized disclosure of such information. DCS stated that the strong public policy to keep confidential the identity of a minor and his/her family involved in a sensitive and possibly stigmatizing matter is paramount when weighed against the strong public policy that "all state, county and municipal records shall, at all times during business hours . . . be open for personal inspection by any citizen of this state"²

Background to Litigation

The Petitioners sent a letter dated September 24, 2012 to DCS requesting records of child fatalities or near-fatalities that occurred between January 1, 2009 and June 30, 2012 for children who, at the time of the fatality or near fatality, (i) were in DCS' custody, (ii) were the subject of an ongoing investigation by DCS or (iii) were the subject of a prior investigation that was closed by DCS prior to their death or near-fatal incident. The Petitioners also requested specific records

² Tenn. Code Ann. § 10-7-503(a)(2)(A). (excerpted).

that included (a) the child's age, (b) race, (c) date of death (or near-fatal incident), (d) county of residence, (e) date the child became known to DCS due to an investigation within a three year period prior to the death or near-fatal incident, (f) whether the child was in DCS custody at the time of the death or near-fatal incident and (g) whether the circumstances were suspected to meet criteria for neglect or abuse.

On October 2, 2012, DCS responded by letter to the Petitioners, stating that the DCS staff had begun the process of retrieving and preparing the requested records, and enclosing an eight page spreadsheet entitled "*January 1, 2009 - June 30, 2012 Fatality Summary*,"³ which contained eleven (11) columns for the year, age, county, date of death, sex, circumstances, date became known within 3 years, open investigation, open assessment, custody and abuse/neglect indicated.

On October 19, 2012, the Petitioner Tennessean emailed DCS and requested all DCS records "in any format available" for five specific children - three from the Fatality Spreadsheet and two from the Near-Fatality spreadsheets. On October 31, 2012, DCS sent a letter in response to this email, stating that disclosure required sensitivity and balance and that, faced with the competing priorities of the public's right to know against the strong public policy against disclosure of child abuse/neglect information, DCS was limiting disclosure to information authorized by the federal government. DCS identified the permitted disclosures as (1) cause and circumstance, (2) age and gender, (3) description of previous reports or abuse investigations pertinent to the child abuse or neglect that led to the fatality or near fatality, (4) result of pertinent investigations, and (5) state services and actions on behalf of the child that are pertinent

³. The Complaint states that DCS provided a fatality spreadsheet and a near fatality spreadsheet as Exhibit D, but the document attached to the Complaint was identified only as a "Fatality Summary."

to the child abuse or neglect that led to the fatality or near fatality. DCS advised the Petitioners that it was in the process of retrieving and preparing the requested information for disclosure consistent with the parameters identified in its letter.⁴ Subsequently, also in response to the email for information about the five specific fatalities, DCS provided a two-page summary of information regarding the five deceased children. The information contained the victims' initials, sex, age, date of death and three to four sentences regarding the circumstances of death. The summary contained one line captioned "Allegation," where DCS alternately listed "death due to abuse/neglect," "drug exposed child and physical abuse" or "medical neglect;" one line captioned "Finding," where DCS opined that the allegation was either "indicated" or "unfounded;" and another line captioned "Autopsy Results," which, for three of the deaths, stated "head trauma due to car accident," or "cause could not be determined," or "Blunt force injuries of the head." DCS also included an additional category for each case history, stating either "prior involvement not pertinent to the fatality" or "no prior involvement."

The Petitioner asserts that DCS provided no explanation regarding how it determined what information was "pertinent" to its summary, and who determined what was considered "pertinent," and that it did not provide any investigative reports, fatality reviews or task force reviews in response to the public records requests.

On November 28, 2012, the Petitioner Tennessean again sent a letter requesting that DCS fully comply with the Public Records Act and produce all the requested information by December 18, 2012. The Office of the Attorney General responded to the Petitioners by letter dated December 18, 2012, stating that DCS had determined that it had produced all the

⁴ DCS stated in its letter that no disclosure would be made that exceeded the scope of information set out in 1-5 above, so as not to directly or indirectly identify either a reporter of abuse or neglect of a child receiving DCS services or to jeopardize a criminal investigation or proceeding, or to otherwise fall afoul of current law and public policy.

documents that it could, consistent with the provisions of state and federal law, and declining the request for all DCS' records for the five specific children requested in the earlier email.

On December 19, 2012, the Petitioners filed their Complaint, stating that pursuant to 42 U.S.C. §5106a(b)(2)(B)(x) and Tenn. Code Ann. § 37-5-107(c), DCS is required to make available information and records relating to a case where child abuse or neglect has resulted in a child fatality or near-fatality.

On January 7, 2013, DCS filed its response to the Complaint, stating that while the records in question met the definition of a public record, both federal and state law evidenced a strong public policy that the records in question be kept confidential, especially in light of Tennessee's comprehensive statutory scheme providing for the confidentiality of child abuse or neglect records, and that such records were not subject to disclosure except in certain limited circumstances, which did not include a response to a public records request.

Counsel for both parties agreed that their respective clients want all children protected when placed in the State's care and agreed that the major issue is one of statutory construction.

The Statutes

The Tennessee Public Records Act, one of the broadest in the country, provides that

All state, county and municipal records shall, at all times during business hours . . . be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.

Tenn. Code Ann. § 10-7-503(a)(2)(A).

The Public Records statute defines a "public record" as

All documents . . . or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in

connection with the transaction of official business by any governmental agency.

Tenn. Code Ann. § 10-7-503(a)(1)(A). Further, the Public Records statute provides that

All applications, certificates, records, reports, legal documents and petitions made or information received pursuant to title 37 that directly or indirectly identifies a child or family receiving services from the department of children's services or that identifies the person who made a report of harm pursuant to § 37-1-403 or §37-1-605 shall be confidential and shall not be open for public inspection, except as provided by §§ 37-1-131, 37-1-409, 37-1-612, 37-5-107 and 49-6-3051.

Tenn. Code Ann. § 10-7-504(l).

As set out above, the General Assembly defined public records to include all documents made pursuant to law or in connection with the transaction of official government business. However, the legislature barred the disclosure of certain documents relating to children and their families, particularly children subject to harm, as confidential and not subject to the Public Records Act, albeit with certain exceptions. In order for the Court to determine if the requested documents are public records subject to being disclosed or are excepted by the legislature, additional statutes must be considered.

First, excepted from disclosure under the Public Records Act is any report made pursuant to Tenn. Code Ann. § 37-1-403⁵, *Reporting of brutality, abuse, neglect or child sexual abuse*, which mandates the reporting of such acts by anyone with knowledge. A companion statute,

⁵ Tenn. Code Ann. § 37-1-403 states, in pertinent part, as follows:

(a)(1) Any person who has knowledge of or is called upon to render aid to any child who is suffering from or has sustained any wound, injury, disability, or physical or mental condition **shall report such harm immediately** if the harm is of such a nature as to reasonably indicate that it has been caused by brutality, abuse or neglect or that, on the basis of available information, reasonably appears to have been caused by brutality, abuse or neglect. (emphasis added).

Tenn. Code Ann. § 37-1-409⁶, *Confidential and privileged information; criminal penalties*, emphasizes the legislature's classification of this information as confidential by imposing criminal sanctions for the wrongful disclosure of the requested documents. As defined in this statute, any records that reflect reports of harm to a child, the identity of the child, the identity of a reporter of child abuse, and/or the identity of any person receiving services under this statute are confidential and not subject to the Public Records Act.

However, the above-cited statute does not prohibit the disclosure of information regarding brutality, abuse or neglect of a child. In the same statutory provision addressing confidentiality, the General Assembly specifically directed DCS to adopt rules necessary for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child abuse or neglect and for cooperating with scientific and govern-

⁶ Tenn. Code Ann. § 37-1-409 states, in pertinent part, as follows:

(a)(1) Except as otherwise provided by this section and §§ 37-1-612 and 37-5-107, reports of harm ... and the identity of the reporter are confidential, except when the juvenile court ... determines the testimony of the person reporting to be material to an indictment or conviction....

(b) Except as otherwise provided ... it is unlawful for any person, except for purposes directly connected with the administration of this part, to disclose, ... any information concerning a report or investigation of a report of harm ... directly or indirectly derived from the records, papers, files or communications of the department or divisions ... acquired in the course of the performance of official duties.

(c) In addition to such other purposes as may be directly connected with the administration of this part, the department shall also grant access to information to those persons specified in § 37-1-612.

(d) The department may confirm whether a child abuse or neglect investigation has been commenced, but may not divulge, except as permitted under this part, any details about the case, including, but not limited to, the name of the reporter, the alleged victim, or the alleged perpetrator

(g) A violation of this section is a Class B misdemeanor.

mental research on child abuse. Tenn. Code Ann. § 37-1-409(e)(1) and (2).⁷

The second exception to the Public Records Act relates to child sexual abuse as set out in Tenn. Code Ann. §37-1-612⁸, *Confidential or privileged information; access to records; rules and regulations; anonymity of reporters*. In this statute, the legislature again provided that records of child sexual abuse are to be kept confidential, with access limited to authorized individuals such as DCS employees, medical professionals, law enforcement agencies investigating the report, the child's attorney and guardian *ad litem*, the district attorney, members of the grand jury conducting official business, etc.⁹ Any person who willfully discloses any

⁷ Tenn. Code Ann. § 37-1-409 (e) states, in pertinent part, as follows:

(e) The department shall adopt such rules as may be necessary to carry out the following purposes:

- (1) The establishment of administrative and due process procedures for the *disclosure* of the contents of its files and the results of its investigations *for the purpose of protecting children* from child sexual abuse, physical abuse, emotional abuse, or neglect; and
- (2) For other purposes directly connected with the administration of this chapter, including, but not limited to, cooperation with schools, child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, *and for cooperation with scientific and governmental research on child abuse and neglect*. (Emphasis added).

⁸ Tenn. Code Ann. § 37-1-612 states, in pertinent part, as follows:

(a) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records concerning reports of child sexual abuse...shall be confidential and exempt from other provisions of law, and shall not be disclosed, except as specifically authorized by chapter 5, part 5 of this title, the provisions of this part and part 4 of this chapter.

(b) Except as otherwise provided in § 37-5-107, this part or part 4 of this chapter, it is unlawful for any person . . . to disclose . . . any information concerning a report or investigation of a report of harm . . . derived from the records, papers, files or communications of the department . . . when such information was acquired in the course of the performance of official duties.

⁹ For example, Tenn. Code Ann. § 37-1-409(e)(2) provides that child abuse reports or information may be shared with

child care agencies, residential and institutional child care providers, child protection agencies, individuals providing care or protection for the child, medical and mental health personnel providing care for the child and the child's family and the perpetrator of any form of child abuse or neglect, law enforcement agencies, the judicial and correctional systems, and scientific and governmental research on child abuse and neglect.

confidential information in the records of a child sexual abuse case commits a misdemeanor. Tenn. Code Ann. § 37-1-615(b).¹⁰

Similar to the provision in Tenn. Code Ann. § 37-1-409(e)(1) and (2) discussed above, this particular statute's confidentiality provision for DCS' child sexual abuse records anticipates that certain information in child sexual abuse files will be disclosed. Again, DCS was directed to adopt rules necessary for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from sexual abuse and for cooperating with scientific and governmental research on child abuse. Tenn. Code Ann. § 37-1-612(f)(1) and (2).¹¹

Another statutory exception to the confidentiality of child sexual abuse records is provided in Tenn. Code Ann. § 37-5-107,¹² which governs the initial creation of DCS and its subsequent operations. The statute provides that DCS shall keep confidential all reports, records, information and other legal documents that identify a child or family receiving services from

¹⁰ Tenn. Code Ann. § 37-1-615(b)

Any person who knowingly and willfully makes public or discloses any confidential information contained in the abuse registry or in the records of any child sexual abuse case, except as provided in this part, commits a Class A misdemeanor.

¹¹ Tenn. Code Ann. § 37-1-612 (f) states, in pertinent part, as follows:

The department shall adopt such rules as may be necessary to carry out the following purposes:

- (1) The establishment of administrative and due process procedures for the disclosure of the contents of its files and the results of its investigations for the purpose of protecting children from child sexual abuse; and
- (2) For . . . cooperation with scientific and governmental research on child abuse and neglect.

¹² Tenn. Code Ann. § 37-5-107(a). Confidentiality of records.

All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to this title that directly or indirectly identify a child or family receiving services from the department or that identify the person who made a report of harm pursuant to § 37-1-403 or § 37-1-605 shall be kept confidential and shall not be disclosed, except as provided by this section and §§ 37-1-131, 37-1-409, 37-1-612 and 49-6-3051.

DCS, or an individual who reports harm to a child. However, the statute provides for the public disclosure of information about any case that results in a child fatality or near-fatality, in order to comply with a federal statute, 42 U.S.C. § 5106a(b)(2)(A)(x)[sic].¹³ Tenn. Code Ann. § 37-5-107(c)(4).¹⁴ This statute, the federal Child Abuse Prevention and Treatment Act (“CAPTA”), authorizes grants to states for child abuse and neglect prevention and treatment programs. To be eligible, a state must establish

methods to preserve the confidentiality of all records in order to protect the rights of the child and of the child’s parents or guardians, including requirements ensuring that reports and records made and maintained pursuant to the purpose of this subchapter and subchapter III of this chapter shall only be made available to

¹³. The reference to the federal statute in Tenn. Code Ann. § 37-5-107(c)(4) is wrong. The correct citation is 42 U.S.C.A. § 5106a(b)(2)(B)(x), which states, in pertinent part, as follows:

Grants to States for child abuse or neglect prevention and treatment programs. . .

(b) Eligibility requirements

(1) State plan . . .

(2) Contents . . .

A State plan submitted under paragraph (1) shall contain a description of the activities that the State will carry out using amounts received under the grant to achieve the objectives of this subchapter, including—

(B) an assurance in the form of a certification by the Governor of the State that the State has in effect and is enforcing a State law, or has in effect and is operating a statewide program, relating to child abuse and neglect that includes—

(x) provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality[.]

¹⁴. Tenn. Code Ann. § 37-5-107 (c)(4).

The department shall release information in the following circumstances:

(4) To provide for the public disclosure of information about any case that results in a child fatality or near fatality in compliance with 42 U.S.C. § 5106a(b)(2)(A)(x). For purposes of this subdivision (c)(4), “near fatality” means a child had a serious or critical medical condition resulting from child abuse or child sexual abuse, as reported by a physician who has examined the child subsequent to the abuse;

- (i) individuals who are the subject of the report;
- (ii) Federal, State, or local government entities, or any agent of such entities, as described in clause (ix);
- (iii) child abuse citizen review panels;
- (iv) child fatality review panels;
- (v) a grand jury or court, upon a finding that information in the record is necessary for the determination of an issue before the court or grand jury; and
- (vi) other entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State purpose.

42 U.S.C.A. § 5106a(b)(2)(B)(viii).

CAPTA requires the Governor to certify an assurance to the U.S. Secretary of Health and Human Services that Tennessee has in effect and is enforcing a State law that includes provisions for the public disclosure of findings or information about cases of child abuse or neglect resulting in a child fatality or near fatality. 42 U.S.C.A. §5106a(b)(2)(B)(x). However, this requirement for disclosure must be examined in light of the regulations enacted pursuant to CAPTA which mandate that

all projects and programs supported under the Act must hold all information related to personal facts or circumstances about individuals involved in those projects or programs confidential and shall not disclose any of the information in other than summary, statistical or other form which does not identify specific individuals, except in accordance with § 1340.14(i).

45 C.F.R. § 1340.20. Thus, all information relating to personal facts or circumstances that identify an abused or neglected child, his or her family, or the person reporting abuse or neglect remains confidential, except in accordance with 45 C.F.R. §1340.14(i),¹⁵ a federal regulation that

¹⁵. 45 C.F.R. § 1340.14(i) Confidentiality.

(1) The State must provide by statute that all records concerning reports and reports of child abuse and neglect are confidential and that their unauthorized disclosure is a criminal offense. In implementing this Confidentiality regulation, the Federal Child Welfare Manual states as follows:

(a) delineates the entities and/or agencies to whom disclosure of such confidential information is permitted and (b) provides that States must classify an unauthorized disclosure of those reports or records as a criminal offense.

DCS states in its Response that on September 12, 2012, the federal agency charged with interpreting and enforcing CAPTA had just defined what information a State must release in order to be in compliance with CAPTA. According to DCS, when the Petitioners filed their request on September 24, 2012, DCS had had insufficient time to implement appropriate regulations and procedures to comply with this new directive as set forth in the federal Child Welfare Policy Manual (“CWPM” or the “Manual”).

The Manual addresses the public policy concerns associated with protecting an abused or neglected child’s identity and keeping confidential the information contained in child abuse and neglect reports; the Manual also recognizes the federal mandate to make certain information

2.1A.1 CAPTA. Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

8. Question: Is it permissible under the Child Abuse Prevention and Treatment Act (CAPTA) for the State to disclose to the public information in the child abuse and neglect record that does not pertain to the case of child abuse and neglect that results in a child fatality or near fatality?
(Updated 09/14/2012)

Answer: No. Except as discussed below, States must preserve the confidentiality of all child abuse and neglect reports and records in order to protect the rights of the child and family. Consistent with section 106(b)(2)(B)(viii) of CAPTA, reports and records made and maintained pursuant to the purposes of CAPTA shall be made available only to the entities and under the circumstances described in section 106(b)(2)(B)(viii)(I-VI) of CAPTA.

As the question implies, a State must release findings or information to the public about a case of child abuse or neglect which results in a child’s fatality or near fatality consistent with section 106(b)(2)(B)(x) of CAPTA in accordance with section 2.1A.4, Q/A#8 of the CWPM. In addition, a State may open court proceedings that determine child abuse and neglect to the public if the safety and well-being of the child, parents and families involved are protected (see the last paragraph of section 106(b)(2) of CAPTA).

U.S. Dep’t of Health and Human Servs., Child Welfare Policy Manual § 8.21A.1, Answer to Question 8, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.

public in instances of a child's fatality or near-fatality. With regard to such public disclosure, however, the Manual clarifies (a) when the requirements in CAPTA "allow" for public disclosure regarding child fatalities and (b) when the Manual "requires" public disclosure.¹⁶ The Manual makes clear that a State is not required to release all of the information in the entire case record, but rather, the State is directed to disclose such findings and information as described in the Manual.¹⁷ The Manual also provides a State with discretion to release the full investigation,

¹⁶ 2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

4. Question: Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to provide an assurance that it will have provisions which "allow" for public disclosure when child abuse or neglect results in a child fatality or near fatality. Yet section 2.1A.1, Q/A #1 of the Child Welfare Policy Manual (CWPM) "requires" public disclosure in such cases. Can you explain the requirements for this State plan assurance?

Answer: "Provisions which allow for public disclosure" in section 106(b)(2)(B)(x) of CAPTA means that the State must have procedures or provisions that allow the public to access information when child abuse or neglect results in a child fatality or near fatality. The State does not have discretion in whether to allow the public access to the child fatality or near fatality information; rather, the public has the discretion as to whether to access the information. In other words, the State is not required to provide the information to the public unless requested. However, once a request has been made, the State must provide the information in accordance with section 2.1A.4, Q/A #8 of the CWPM. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations.

U.S. Dep't of Health and Human Servs., Child Welfare Policy Manual § 8.2D.4, Answer to Question 4, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.

¹⁷ 2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

5. Section 106(b)(2)(B)(x) of the Child Abuse Prevention and Treatment Act (CAPTA) requires a State to have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that results in a child's fatality or near fatality. Is the State required to turn over all of the information in the entire case record, when requested?

Answer: No. The State is not required to release all of the information in the entire case record. Rather, the State must provide for the disclosure of findings and information in accordance with section 2.1A.4, Q/A #8 of the CWPM. As such, the State may determine its procedures in accordance with these parameters, and can release the full investigation; a summary of the investigation; or a statement of findings and information about the incident among other options. Finally, States also should ensure that they are complying with any other relevant Federal confidentiality laws. In particular, entities that are subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) must ensure that they do not disclose confidential information in violation of HIPAA's privacy regulations.

a summary of the investigation or a statement of findings and information about the incident, among other options, provided that the State complies with other relevant federal confidentiality laws such as the Health Insurance Portability and Accountability Act of 1996 ("HIPPA").

Perhaps most pertinent to Petitioners' quest for disclosure of DCS' records of child abuse or neglect which result in a child's fatality or near-fatality is the Manual's directive requiring each State to develop procedures for the release of information including, but not limited to:

- (a) the cause of and circumstances regarding the fatality or near fatality;
- (b) the age and gender of the child;
- (c) information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality;
- (d) the result of any such investigations; and
- (e) the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

U.S. Dep't of Health and Human Servs., Child Welfare Policy Manual § 8.2D.4, Answer to Question 8, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.

As stated, when establishing these procedures, DCS must ensure compliance with any other relevant federal confidentiality laws. In addition, it may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents or family or to keep from jeopardizing a criminal investigation, interfering with the protection of those who report child abuse or neglect, or harming the child or the child's family.¹⁸

U.S. Dep't of Health and Human Servs., Child Welfare Policy Manual § 8.2D.4, Answer to Question 5, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.

¹⁸ 2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

8. Question: Section 106(b)(2)(B)(x) of CAPTA requires states to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. Under this provision, is there information that a state must disclose to the public?

Answer: Yes. States must develop procedures for the release of information including, but not limited to: the cause of and circumstances regarding the fatality or near fatality; the age and gender of the child; information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality; the result of any such

The federal and state statutes, including the regulations, make clear the legislature's intent to preserve a child's rights or a family's rights (or that of a reporter of child abuse). Equally clear is the legislature's intent that child abuse or neglect be promptly investigated, and if substantiated, handled by appropriate law enforcement officials. The statutes authorize the release of such information to governmental and child protective services workers to provide protective, medical, and legal services and assistance to the child and the child's family. The legislature also requires that these protective services be rendered in a responsible fashion, with accountability by all involved in providing these services, as evidenced by the establishment of three Citizen Review Panels,¹⁹ an annual reporting requirement to the U.S. Secretary,²⁰ The Second Look Commission,²¹ and the research public outreach provisions requiring public disclosure of child abuse/ neglect fatalities.

investigations; and the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality. State policies must ensure compliance with any other relevant federal confidentiality laws, including the confidentiality requirements applicable to titles IV-B and IV-E of the Social Security Act. States may allow exceptions to the release of information in order to ensure the safety and well-being of the child, parents and family or when releasing the information would jeopardize a criminal investigation, interfere with the protection of those who report child abuse or neglect or harm the child or the child's family.

U.S. Dep't of Health and Human Servs., Child Welfare Policy Manual § 8.2D.4, Answer to Question 8, available at http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/index.jsp.

19. However, this Court could find no State regulation or enabling legislature for the creation of the Citizen Review Panels. The federal law, 42 U.S.C.A. §5106a(c) required the State to establish citizen review panels in order to receive funding for the Child Abuse and Neglect State Grants Program. In 1996, Tennessee responded by contracting with the Tennessee College of Social Work Office of Research and Public Services ("SWORPS") to coordinate, facilitate, and provide technical assistance to three Citizens Review Panels (CRPs). The University of Tennessee Social Work Office of Research and Public Service, TENNESSEE CITIZENS REVIEW PANEL ANNUAL PROGRESS REPORT, 2002, 5/16/2003, p. 3, and the TENNESSEE CITIZEN REVIEW PANEL, ANNUAL REPORT, June 2011. The role of the Citizen Review Panels ("CRPs"), a group of volunteers assisting the State with meeting its goals of protecting children from abuse and neglect, is to examine child protective services' policies and procedures to ensure that Tennessee's Child Protective Services ("CPS") programs are in compliance with the State Plan. Panel members review cases, evaluate data, and collaborate with child welfare serving agencies on other aspects of the CPS program they consider to be important in an effort to keep children safe. The University of Tennessee Social Work Office of Research and Public Service, TENNESSEE CITIZEN REVIEW PANEL, ANNUAL REPORT, JUNE 2011, p. 1, 6/9/2011. Currently, Tennessee has four (4) CRP's located in Montgomery County (Clarksville), Shelby County (Memphis), Hamilton County (Chattanooga) and the Northwest Region of Tennessee (including nine rural counties). The University of Tennessee, College of Social Work Office of Research and Public Service continues to contract with the Tennessee Department

DCS' assertion that it was delayed in meeting the Petitioners' request because the federal Manual only defined "information" in September, 2012 is somewhat specious, given that the

of Children's Services to coordinate, facilitate, and provide technical assistance to the CRP's in order to meet federal requirements. *Id.* at p. 5

The federal law, 42 U.S.C.A. §5106a(c) (1)(A) and (c)(4), state, in pertinent part, as follows:

(c) **Citizen review panels**

- (1) Establishment
- (2)

(A) In general

Except as provided in subparagraph (B), each State to which a grant is made under this section shall **establish not less than 3 citizen review panels.**

- (3) Membership . . .
- (4) Meetings

Each panel established pursuant to paragraph (1) shall meet not less than once every 3 months.

(4) Functions

(A) In general

Each panel established pursuant to paragraph (1) shall, by examining the policies, procedures, and practices of State and local agencies and where appropriate, specific cases, evaluate the extent to which State and local child protection system agencies are effectively discharging their child protection responsibilities in accordance with--

...

(iii) any other criteria that the panel considers important to ensure the protection of children, including-

...

(II) a review of child fatalities and near fatalities (as defined in subsection (b)(4) of this section).

(B) Confidentiality

(i) In general

The members and staff of a panel established under paragraph (1) - -

(I) shall not disclose to any person or government official any identifying information about any specific child protection case with respect to which the panel is provided information; and

(II) shall not make public other information unless authorized by State statute.

42 U.S.C.A. § 5106a(c)(1) - (4)(emphasis added).

²⁰ 42 U.S.C.A. §5106a(d).

²¹ Tenn. Code Ann. § 37-8-801, et seq. Tennessee Second Look Commission.

State was under the directive to make public disclosure of child fatalities and near-fatalities prior to 2006. In 2006, DCS promulgated an extensive rule, Tenn. Comp. R. & Reg. Chapter 0250-6-1, for the purpose of providing access to records that were subject to the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-501, *et seq.*

The primary concern of all the statutes is to preserve the identity of individuals involved in child abuse and neglect and not to shield information that such abuse occurred. The Manual makes clear that the Petitioners were entitled to the disclosure of information when they requested it; that DCS did not have the information readily available becomes apparent upon a review of the four files provided to the Court.

The Four Child Fatality or Near-Fatality Files

The Petitioners requested disclosure of records regarding 206 children, including one child who had been adopted.²² At the hearing on January 8, 2013 and pursuant to an Order to bring all records pertaining to the Petitioners' Public Records Act, DCS explained that due to (a) the shortness of time between the issuance of the Order on December 27, 2012 and the hearing, (b) the holiday closure of public offices during these time periods, and (c) the location of the records in regional offices throughout the State, it was providing the Court with four (4) files identified in The Tennessean's October 19, 2012 request for an *in camera* inspection. The four files were not officially entered into the record, pending an inspection by the Court.

The Court inspected the four files which contain checklists, typed information on computer-generated forms, intake summaries, case recording summaries, letters, child protective investigation team reviews, child protective services investigation summaries and "classification decision of child abuse/neglect referrals," investigative reports by county medical examiners,

²² The Court shall not require disclosure of any information regarding the adopted child.

autopsies, medical and lab reports, copies of photographs, safety assessments, print-outs of computer-generated searches, "Native American Heritage Veto Verifications," hand-written notes, acknowledgements, and consent forms. The files do not appear to be in chronological order nor are they organized in a meaningful way; the individual pages are held together with large clips in plain folders with the initials of the child on the folder tab. Each file reflects various time periods when DCS employees or others had contact with the deceased child, siblings and/or family members. Upon the death of a child, DCS employees completed or partially completed a summary form of the child protective services investigation and classified the decision of the child abuse/neglect referrals; in some instances, the referral forms were generated a number of times with either the same or differing information on the referral form. In each file, one or a number of referral forms appear to summarize how the child died and the circumstances surrounding the death of the child. The Court's examination found that the four files contained confidential information; however, any identifying information contained in the summary referral forms, such as social security or telephone numbers, the names of individuals, locations of labs, hospitals, and schools, is capable of redaction, thus permitting the disclosure required by 42 U.S.C. §5106a. The redacted summary referral forms contain the following information:

- (a) the cause of and circumstances regarding the fatality or near fatality;
- (b) the age and gender of the child;
- (c) information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality;
- (d) the result of any such investigations; and
- (e) the services provided by and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

Other documents in the four files are disparate, relating to events that mostly predate the date of death (or near-death) by months. Some documents contain health information of the deceased or siblings; some contain information about the placement or living conditions of the child unrelated to the circumstances surrounding the death; some contain sensitive information necessary for criminal prosecution.

Analysis

The parties contend that this case requires an analysis of a number of competing statutes and the public policy reflected in each statute. The most basic principle of statutory construction

is to ascertain and give effect to legislative intent without broadening the statute beyond its intended scope. When statutory language is clear and unambiguous, we must apply its plain meaning in its normal and accepted use, without a forced interpretation that would extend the meaning of the language and, in that instance, we enforce the language without reference to the broader statutory intent, legislative history, or other sources. Statutes relating to the same subject or having a common purpose should be construed together. We must presume that the General Assembly is aware of prior enactments and of decisions of the courts when enacting legislation.

Carter v. Bell, 279 S.W.3d 560, 564 (Tenn. 2009)(internal citations omitted).

The Public Records Act has been described as an “all encompassing legislative attempt to cover all printed matter created or received by government in its official capacity.” *Schneider v.*

City of Jackson, 226 S.W.3d 332, 339 (Tenn. 2007). To that effect,

the General Assembly has directed the courts to construe broadly the Public Records Act “so as to give the fullest possible access to public records.” Tenn. Code Ann. § 10–7–505(d). Thus, unless an exception is established, we must require disclosure “even in the face of serious countervailing considerations.”

Id. at 340 (citing *Memphis Publ'g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994)).

DCS argues that the legislative intent expressed in six different statutes makes various records in its custody confidential and the unauthorized disclosure of such confidential records a

criminal offense.²³ As explained by DCS, the General Assembly enacted a comprehensive statutory scheme to provide for the confidentiality of records and information in order to protect vulnerable children, to encourage persons with knowledge of abuse or neglect of children to report the abuse or neglect, and to invite families to openly communicate with professionals to seek assistance. The legislative intent, as expressed in the Mandatory Child Abuse Reports Act,

[i]s to protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect by requiring reporting of suspected cases by any person having cause to believe that such case exists. It is intended that, as a result of such reports, the protective services of the state shall be brought to bear on the situation to prevent further abuses, to safeguard and enhance the welfare of children, and to preserve family life. This part shall be administered and interpreted to provide the greatest possible protection as promptly as possible for children.

Tenn. Code Ann. § 37-1-402(a).

Both parties assert that their major concern is for the State's most vulnerable population, its infants, children and youth. When parents fail to properly care for their children, elected officials have enacted laws to protect and provide for these children.

The basis for government's intervention in child maltreatment is grounded in the concept of *parens patriae*—a legal term that asserts that government has a role in protecting the interests of children and in intervening when parents fail to provide proper care. . . It has long been recognized that parents have a fundamental liberty, protected by the Constitution, to raise their children as they choose. The legal framework regarding the parent-child relationship balances the rights and responsibilities among the parents, the child, and the State, as guided by Federal statutes. This parent-child relationship identifies certain rights, duties, and obligations, including the responsibility of the parents to protect the child's safety and wellbeing. If parents, however, are unable or unwilling to meet this responsibility, the State has the power and authority to take action to protect the child from harm. Over the past several decades, Congress has passed significant pieces of legislation that support the States' duty and power to act on behalf of children when

²³. See Tenn. Code Ann. §§ 36-1-125(d), 37-1-131(a)(2)(J) and (K)(iv), 37-1-409(a) and (g), 37-1-612 and 615(b), 37-2-408(b) and 37-5-107(e)(3).

parents are unable or unwilling to do so. The Child Abuse Prevention and Treatment Act (CAPTA) is one of the key pieces of legislation that guides child protection. CAPTA, in its original inception, was signed into law in 1974.²⁴

Administration for Children and Families/Children's Bureau, U.S. Dept. of Health and Human Servs., The Child Abuse Prevention and Treatment Act, (compilation, dated February 2004).

As set out above, many federal and state statutory safeguards have been passed to protect a child at risk of harm,²⁵ their siblings and their families, as this protection includes the confidentiality of records involving child abuse and neglect.²⁶ Criminal penalties exist for the wrongful disclosure of information from DCS departmental records. In addition, however, both federal and state statutes strive to protect children by holding the government agencies that assist them accountable, i.e., by providing for the disclosure of information about any case that results in a child fatality or near-fatality.

The Petitioners allege that the public has a strong interest in knowing what actions DCS took, or failed to take, before the deaths or near-death of children under its care. They contend that this strong public policy outweighs any privacy concern referenced by DCS when it limited its previous disclosure to brief summaries of information, and that the disclosure of the records is intended to help prevent similar tragedies in the future.

²⁴. P.L. 93-247 was reauthorized in 1978, 1984, 1988, 1992, and 1996, and with each reauthorization, amendments have been made to CAPTA that have expanded and refined the scope of the law.

²⁵. Tenn. Code Ann. § 37-1-402. Legislative intent; construction:

(a) The purpose of this part is to protect children whose physical or mental health and welfare are adversely affected by brutality, abuse or neglect by requiring reporting of suspected cases by any person having cause to believe that such case exists. It is intended that, as a result of such reports, the protective services of the state shall be brought to bear on the situation to prevent further abuses, to safeguard and enhance the welfare of children, and to preserve family life. This part shall be administered and interpreted to provide the greatest possible protection as promptly as possible for children.

²⁶. Tenn. Code Ann. § 37-1-409. Confidential and privileged information; criminal penalties.

Petitioners also assert that all DCS records constitute the “information” that they are entitled to access under the Public Records Act. They fail to address the exception for information that directly or indirectly identifies a child or family receiving services from DCS, or a person who makes a report of harm. This blanket of confidentiality includes information contained in applications, certifications, records, reports, legal documents and petitions in the possession of, not only the department of children’s services but any state or local agency, including but not limited to, law enforcement and the department of education. Tenn. Code Ann. § 10-7-504 (1)(2). The Public Records Act, however, does contain a provision that confidential information may be redacted whenever possible, provided that the Petitioners bear the costs associated with the redacting of the records or information.²⁷

The response by DCS that it had insufficient time to respond to the Petitioners’ request is unpersuasive. For years, DCS has been authorized to promulgate its own rules to maintain the confidentiality of adoption records and records required to be confidential by federal statute or regulation as a condition for the receipt of federal funds.²⁸ Since the inception of the federal law

²⁷. Tenn. Code Ann. § 8-4-604 (a) provides, in part, as follows:

The office of open records counsel shall establish:

(1)(A) A schedule of reasonable charges that a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to title 10, chapter 7, part 5. In establishing the schedule, the office of open records counsel shall consider:

(i) Such factors as the size, by population, of the county or municipality, the complexity of the request, the number of man hours involved in retrieving the documents, **redacting confidential information from the documents** and any other costs involved in preparing the documents for duplication, the costs of duplication, the costs of mailing the documents if the requestor is not returning to retrieve the requested documents, and any other costs that the office of open records counsel deems appropriate to include in the charge; (emphasis added).

²⁸. Tenn. Code Ann. § 10-7-503 (b) states

The head of a governmental entity may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to maintain the confidentiality of records concerning adoption proceedings or records required to be kept confidential by federal statute or regulation as a condition for the receipt of federal funds or for participation in a federally funded program.

in 1974, CAPTA required Tennessee, as a recipient of federal funds, to provide, to the maximum extent practicable, reports to the U.S. Secretary regarding abused or neglected children served by DCS.²⁹ In response, DCS promulgated a rule³⁰ in 2006 stating that that before providing access to the requested records, the DCS staff shall review the request as quickly as reasonably possible, consistent with the availability of appropriate staff and with regard to the scope of the records requested, and make an assessment of the status of the records and the scope of the requested access. Tenn. Comp. R. & Regs. Chapter 0250-6-1-.03(3)(a)(1) REQUESTS FOR ACCESS TO RECORDS. The Rule allows a DCS staff person to conduct the review and redact any such data or information prior to release of the record, or portion of the record, that he or she has reason to believe is or may be confidential, privileged or otherwise protected. *Id.* at 0250-6-1-.03(3)(a)(2).

²⁹. 42 U.S.C.A. § 5106a

(d) Annual State data reports

Each State to which a grant is made under this section **shall annually work** with the Secretary to provide, to the maximum extent practicable, **a report** that includes the following:

(1) The number of children who were reported to the State during the year as victims of child abuse or neglect.

(2) Of the number of children described in paragraph (1), the number with respect to whom such reports were--(A) substantiated; (B) unsubstantiated; or (C) determined to be false.

...

(5) ***The number of deaths in the State during the year resulting from child abuse or neglect.***

(6) Of the number of children described in paragraph (5), the number of such children who were in foster care.

(7)(A) The number of child protective service personnel responsible for the--(i) intake of reports filed in the previous year; (ii) screening of such reports; (iii) assessment of such reports; and (iv) investigation of such reports.

(B) The average caseload for the workers described in subparagraph (A).

(8) The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

(8) The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

...

(11) **The number of children reunited with their families . . . that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.**

(Emphasis added)(see also footnote 24).

³⁰. Tenn. Comp. R. & Reg. Chapter 0250-6-1, ACCESS TO PUBLIC RECORDS OF THE DEPARTMENT OF CHILDREN'S SERVICES. December, 2006 (Revised).

The redacting of all confidential information in the four DCS files examined by the Court would require a significant amount of time and effort to insure that no identifying information is erroneously disclosed. An equally significant amount of time and effort may be required to insure that no other statutes bar the release of other protected or excluded information, such as health/medical records or financial aid records.

In balancing³¹ the public's right of access to government records with the burden that the disclosure may impose, the Court finds that upon a child's death, DCS' reliance upon the strong public policy of client confidentiality is vitiated. No longer can the State protect or provide for the child, and its efforts or lack thereof become a key concern. As discussed previously, the Public Records Act provides a specific exception to the requirement that the DCS' records must be open. This exception, though, has its own exception that occurs upon the death or near-death of a child in the care DCS. The construction of a statute is a question of law. *See, Larsen-Ball v. Ball*, 301 S.W.3d 228, 232 (Tenn. 2010). If the language of the statute is unambiguous, the Court's duty is to follow it. *See, Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 309 (Tenn. 2008).

The statutory exception to the exception [DCS shall provide for the public disclosure of information about a case that results in an abused or neglected child's fatality or near-fatality] compels the Court to find that the DCS records regarding the deaths or near-deaths of children in DCS care are subject to the Public Records Act. This finding, however, does not breach the statutory mandate that the identity of the child, the child's relatives, the individuals involved in caring for the child, and any reporter of abuse or neglect be kept confidential. This finding does

³¹. See *Swift v. Campbell*, 159 S.W.3d 565, 573 (Tenn. Ct. App. 2004) regarding the duty of the court to balance competing interests.

not authorize disclosure of information made confidential by other statutes, particularly those statutes governing law enforcement, health care and public assistance.

CONCLUSION

By separate Order, the four files left with the Court shall be placed under seal. Thereafter, DCS shall redact all identifying information such as names of all individuals³² and the identity of locations, labs, hospitals, and schools, from the referral forms³³ that summarize the DCS investigation of how the child died and the circumstances surrounding his or her death.

The Court orders disclosure of the remaining information in those forms which reveal:

- (a) the cause of and circumstances regarding the fatality or near fatality;
- (b) the age and gender of the child;
- (c) information describing any previous reports or child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or near fatality;
- (d) the result of any such investigations; and
- (e) the services provided to and actions of the State on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

The remaining DCS files sought by the Petitioners shall be subject to this same requirement, and to the statutory provision that governs large-volume requests and the time and complexity of redacting confidential information from documents.³⁴ DCS stated that the

³² DCS shall substitute neutral terms to identify the individual, such as AV for alleged victim, AP for alleged perpetrator, CW for case worker, ME for medical examiner, MD for physician, ADA for assistant district attorney and so forth in order that the redaction remains coherent. These abbreviations appear in some of the summaries, and appear to be in common usage by DCS in its reports.

³³ To avoid any misunderstanding, the Court has used a yellow highlighter to flag the top and bottom pages of the summary reports in each file that are subject to this Order; in file FCB, there are 143 pages, of which 48 pages qualify for redaction; in file FEB, there are 169 pages, of which 42 pages qualify for redaction; in file NFAG, there are 315 pages, of which 38 pages qualify for redaction, and in file FDH, there are 4 manila folders with a total of 637 pages, of which 35 pages qualify for redaction. None of the pages in any of the files are date-stamped and the Court hand counted the pages; an error in counting the pages may be possible. Attached to this Order are three pages from one file with redactions as an example of the information that is to be kept confidential.

³⁴ Tenn. Code Ann. § 8-4-604 (a) states, in pertinent part, as follows:

approximately 200 files are located throughout the State and time will be needed to physically produce them; DCS did not give an estimate of the time needed or the expense to redact identifying information on the referral forms.

DCS shall provide to the Petitioners the redacted referral forms found in the four files within ten (10) days from the date of this Order. On that date, DCS shall also file with the Court an estimate of the time and costs involved in redacting all confidential and identifying information in the summary referral forms in the approximately 200 files. DCS has a statutory

The office of open records counsel shall establish:

(1)(A) A schedule of reasonable charges that a records custodian may use as a guideline to charge a citizen requesting copies of public records In establishing the schedule, the office of open records counsel shall consider:

- (i) **Such factors as the size, by population, of the county or municipality, the complexity of the request, the number of man hours involved in retrieving the documents, redacting confidential information from the documents and any other costs involved in preparing the documents for duplication, the costs of duplication, the costs of mailing the documents if the requestor is not returning to retrieve the requested documents, and any other costs that the office of open records counsel deems appropriate to include in the charge; (emphasis added) and**
- (ii) The principle presented by the study committee created by Acts 2006, ch. 887:
 - (a) That state policies and guidelines shall reflect the policy that providing information to the public is an essential function of a representative government and an integral part of the routine duties and responsibilities of public officers and employees;
 - (b) That excessive fees and other rules shall not be used to hinder access to nonexempt public information;
 - (c) That, in accordance with § 10-7-503(a)(7)(A), no charge shall be assessed to view a public record unless otherwise required by law;
 - (d) That the requestor be given the option of receiving information in any format in which it is maintained by the agency, including electronic format consistent with title 10, chapter 7, part 1; and
 - (e) That when **large-volume requests are involved, information shall be provided in the most efficient and cost-effective manner**, including but not limited to permitting the requestor to provide copying equipment or an electronic scanner

(B) The schedule established pursuant to subdivision (a)(1)(A) shall be revised at least annually;

- (2) A separate policy related to reasonable charges that a records custodian may charge for frequent and multiple requests for public records; and
- (3) A safe harbor policy for a records custodian who adheres to the policies and guidelines established by the office of open records counsel.
- (b) The office of open records counsel shall make the policies and guidelines available on the Internet.
- (c) The policies and guidelines shall not be deemed to be rules under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.


(Emphasis added).

duty to provide the non-confidential information as an essential function and integral part of its routine duties.³⁵

Once the Court is advised by DCS of the estimated time and costs necessary to comply with this Order, the Petitioners shall advise DCS if they will be responsible for the costs. Upon the Petitioners' affirmative notice, DCS shall redact all confidential and identifying information from the over 200 requested files³⁶ and produce those redacted referral forms to the Petitioners by a date certain. Upon proper motion, the Petitioners make seek a date certain for DCS to produce the redacted summary forms to the Petitioners.

Pending these disclosures, the Court at this time declines to require further disclosures and reserves ruling on the issue of attorneys' fees. Costs are taxed to the Respondents.

It is so ORDERED.


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³⁵ See footnote 30, T.C.A. §8-4-604(1)(A)(ii)(a) above.

³⁶ DCS is not ordered to produce the file of the deceased adopted child that it referenced.

RULE 58 CERTIFICATION

A copy of this order has been served by U.S. Mail upon all parties or their counsel named above.

Th
Chancery Court Deputy Clerk and Master

1-23-13
Date



EX.2

Tennessee Department of Children's Services
CPS Intake Summary

Intake ID: 7680756

Intake Taken By: [REDACTED]

Intake Date / Time: 10/29/2010 08:16 PM
CT

Track Assigned: Investigation

Priority Assigned: 1

Screened By: [REDACTED]

Det [REDACTED]

Date Screened: 10/29/2010

Investigation ID: ~~50800063~~ 50800063

First County/Region Assigned: [REDACTED] County

Date/Time Assigned: 10/29/10 @ 9pm

First Team Lead Assigned: [REDACTED]

Date/Time Assigned:

First Case Manager Assigned: [REDACTED]

Date/Time Assigned:

Allegations

Alleged Victim	Age	Allegation	Severe?	Alleged	Relationship to Alleged Victim
[REDACTED]	0 Yrs	Physical Abuse	Yes	Unknown Participant 36401882, Unknown	None
[REDACTED]	0 Yrs	Lack of Supervision	Yes	[REDACTED]	Birth Mother

Referent Detail

Referent Name: [REDACTED]

Role to Alleged Victim(s): Judicial Personnel

Referent Address: ROBox [REDACTED] Tennessee [REDACTED]

Referent Phone Number: [REDACTED]

Type of Contact: Work

Notification: None

EX.1



Tennessee Department of Children's Services
CPS Intake Summary

Narrative: TFACTS: No Open or Indicated History Found

Open Court Custody/FSS/FCIP: No

Prior INV/ASMT of Abuse: No

Prior INV/ASMT of Neglect: No

County: [REDACTED]

Notification: Letter

School/ Daycare: None provided

Native American Descent: [REDACTED]

Directions: None provided

Reporter's Name/ Relationship: [REDACTED] attorney

Reporter states: The child, [REDACTED] (9 months) was brought into [REDACTED] Hospital unresponsive. [REDACTED] had a CT scan. The staff told the reporter that she had bleeding to the left side of her brain. The staff said that the bleeding could only come from trauma to her head. Once her heart rate was elevated, she was flown to [REDACTED] [REDACTED] should be there at this time. The hospital staff said that a referral was not called in to CPS because they were concerned with saving [REDACTED] life. The address was not provided but the phone number was given for mom, [REDACTED] says that [REDACTED] was with her all day and nothing unusual happened that she is aware of.

This is all the information reported at this time.

Per SDM: Investigative Track/ P1

P1 on 10/29/10 @ 8:45 PM, [REDACTED] CM3

paged 8:46 PM

Spoke with [REDACTED] @ 8:50 PM

Participant(s) Details

Name: Unknown Participant 36401882, Unknown

Participant ID: 36401882

Gender:

Date of Birth:

Age:

SSN:

Race:

Address:

Deceased Date:

School/Childcare:

Alleged Perpetrator: Yes

DCS Foster Child: No

EX.3

Case Name: [REDACTED]

D. Case Worker

[REDACTED]

Date

03/30/2011

Team Leader

[REDACTED]

Date

03/30/2011

E.

Instructions: Condense the finding rationale for each allegation relative to the child victim(s). Be sure to identify the facts that provided a basis for the

Summarize the key points and dates of the child or children's statements and/or the observation of the child or children's physical state or home environment:

10/30/10 - [REDACTED] had large yellow-greenish bruises on both buttocks. The attending RN removed [REDACTED] collar brace so that the bruises around her neck could be viewed and photographed. [REDACTED] displayed oblong elliptical shaped yellow/green/brown bruises under her jaw bone on both sides of her face. The bruises extended from her chin to approximately the end of her jaw bone. [REDACTED] displayed a nickel size yellow/brown bruise above her left knee as well as a dime size yellow/brown bruise over her right shoulder at the top of the blade.

10/31/10 - Dr. [REDACTED] called [REDACTED] death at 12:41am.

Summarize professional, medical or psychological findings or opinions: What is the collateral's oral or written finding/opinion of the incident(s)/allegation(s)?

10/30/10 - Dr. [REDACTED] stated that [REDACTED]'s head CT scan shows left subdural hematoma, which is bleeding between the brain and the skull. [REDACTED] suffered anoxic (lack of oxygen) injury to both sides of the brain. The brain monitor shows that [REDACTED] has high pressure in the brain. Her brain has swelled due to lack of oxygen and blood flow and eventually the brain will herniate. Dr. [REDACTED] also described bruising across [REDACTED]'s buttocks and bruising around her neck. Dr. [REDACTED] stated that the bruises are approximately 2-3 days old. At this time, Dr. [REDACTED] is unaware of any other injuries to [REDACTED]. [REDACTED] did not display any petechia (blood spots on the skin). In his professional opinion, [REDACTED]'s injuries are acute (most likely occurred today) and are due to shaking and or choking. He has no non-accidental explanation for her injuries.

10/30/10 - RN [REDACTED] was working when [REDACTED] was brought into [REDACTED] ER. RN [REDACTED] stated that he noticed the bruising on [REDACTED] and reported that it was not caused by anything staff did in the process of trying to save her life. RN [REDACTED] stated that the bruises on [REDACTED]'s buttocks were yellowish and green in color. RN [REDACTED] stated that Mrs. [REDACTED]'s friend, [REDACTED] was highly agitated and concerned about [REDACTED]. Ultimately, hospital security had to escort Mr. [REDACTED] off the property. Mrs. [REDACTED] was reticent to provide his name to hospital staff.

11/2/10 - DCS Attorney, [REDACTED] consulted medical expert, Dr. [REDACTED], regarding the medical records on [REDACTED]. Dr. [REDACTED] reported that in her medical opinion: [REDACTED] received severe non-accidental trauma intentionally inflicted - these injuries would have occurred from being ejected from a vehicle or falling off a several story building. Dr. [REDACTED] stated that the injury would have happened almost immediately or "within seconds" of the child having been presented to ER at [REDACTED]. Dr. [REDACTED] stated that the baby's temp was 92 degrees when presented at [REDACTED], which mean that she was "basically already dead" by the time she arrived at [REDACTED]. The right tissue swelling may have resulted in the child falling off the couch two days earlier but not the trauma to the left side of head. The findings are indicative of being shaken as opposed to impact as evidenced by the multiple layers of hemorrhages at the eyes (360 - all around and some portions, detached), which is indicative of violent shaking.

Summarize alleged perpetrator's statement or admission: What is the perpetrator's explanation of the incident(s)/allegation(s)?

10/30/10 - Mrs. [REDACTED] reported that her grandmother, [REDACTED], has been the babysitter for [REDACTED] and [REDACTED] while she has been at work. Mrs. [REDACTED] and [REDACTED] and [REDACTED] reside with her parents, [REDACTED]